

BILL ANALYSIS

Senate Research Center

H.B. 156
By: Eckels
Economic Development
9-3-93
Enrolled

BACKGROUND

Texas is the only major state that has not modernized its 30 year-old "first generation" condominium statute. Some people feel that the 1963 Texas Condominium Act, Chapter 81, Property Code, is inadequate to deal with the complex issues inherent in condominium development, ownership, management, and marketing.

PURPOSE

As enrolled, H.B. 156 adopts the Uniform Condominium Act.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 7, Property Code, by adding Chapter 82, as follows:

CHAPTER 82. UNIFORM CONDOMINIUM ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 82.001. **SHORT TITLE.** Authorizes this title to be cited as the Uniform Condominium Act.

Sec. 82.002. **APPLICABILITY.** (a) Provides that this chapter applies to all commercial, industrial, residential, and other types of condominiums in this state for which the declaration is recorded on or after January 1, 1994. Authorizes a condominium for which the declaration was recorded before January 1, 1994, to be governed exclusively under this chapter if either the owners of units vote to amend the declaration to have this chapter apply and that amendment is filed for record in the condominium records in each county in which the condominium is located; or a declaration or amendment of declaration was recorded before January 1, 1994, and the declaration or amendment states that this chapter will apply in its entirety on January 1, 1994.

(b) Prohibits an amendment to a declaration under Subsection (a)(1) that implements a vote of the unit owners to be governed by this chapter from affecting the rights of the declarant or impose duties on a declarant that are greater than or in addition to the declarant's duties immediately before the date of the vote or amendment.

(c) Sets forth sections that apply to a condominium in this state for which the declaration was recorded before January 1, 1994. Sets forth the definitions that apply to a condominium for which the declaration was recorded before January 1, 1994. Provides that the sections listed in this subsection apply only with respect to events and circumstances occurring on or after January 1, 1994.

(d) Provides that Chapter 81 does not apply to a condominium for which the declaration was recorded on or after January 1, 1994, and does not invalidate any amendment to the declaration, bylaws, or plats and plans of any condominium for which the declaration was recorded before January 1, 1994, if the amendment would

be permitted by this chapter. Requires the amendment to be adopted in conformity with the procedures and requirements specified in those instruments and by Chapter 81. Provides that if the amendment grants to a person a right, power, or privilege permitted by this chapter, all correlative obligations, liabilities, and restrictions prescribed by this chapter also apply to that person.

Sec. 82.003. DEFINITIONS. (a) Defines "affiliate of a declarant," "allocated interests," "association," "board," "common elements," "common expense liability," "common expenses," "condominium," "conversion building," "declarant," "declaration," "development rights," "disposition," "general common elements," "identifying number," "leasehold condominium," "limited common element," "plan," "plat," "purchaser," "residential purposes," "special declarant rights," "unit," and "unit owner."

(b) Provides that unless otherwise provided by the declaration or bylaws, a term defined by Subsection (a) has the same meaning if used in a declaration or bylaws.

Sec. 82.004. VARIATION BY AGREEMENT. Prohibits provisions of this chapter from being varied by agreement and prohibits rights conferred by this chapter from being waived, except as expressly provided by this chapter. Prohibits a person from acting under a power of attorney or using any other device to evade the limitations or prohibitions of this chapter or the declaration.

Sec. 82.005. SEPARATE TITLES AND TAXATION. (a) Provides that if there is a unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real property.

(b) Requires each unit to be separately taxed and assessed, and no separate tax or assessment may be rendered against common elements for which a declarant has not reserved development rights, if there is a unit owner other than a declarant. Requires any portion of the common elements for which a declarant has reserved any development right to be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.

(c) Authorizes the real property constituting the condominium to be taxed and assessed in any manner provided by law, if there is no unit owner other than a declarant.

(d) Provides that the laws relating to homestead exemptions from property taxes apply to condominium units, which are entitled to homestead exemptions in those cases in which the owner of a single family dwelling would qualify.

Sec. 82.006. APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS, AND BUILDING CODES. Prohibits a zoning, subdivision, building code, or other real property use law, ordinance, or regulation from prohibiting the condominium form of ownership or from imposing any requirement on a condominium that it would not impose on a physically identical development under a different form of ownership. Provides that otherwise, this chapter does not invalidate or modify any provision of any zoning subdivision, building code, or other real property use law, ordinance, or regulation.

Sec. 82.007. CONDEMNATION. (a) Requires a condemnation award to compensate a unit owner for the unit and its common element interest, whether or not any common element interest is acquired, if the unit is acquired by condemnation, or if part of a unit is acquired by condemnation leaving the unit owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration. Provides that on acquisition, unless the decree provides otherwise, the condemned unit's entire allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the unit owner's association (association) shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Provides that a remnant of a unit remaining after part of a unit is taken under this subsection is a common element.

(b) Requires the award, if part of a unit is acquired by condemnation, to compensate the unit owner for the reduction in value of the unit and its common element interest, except as provided by Subsection (a). Provides that on acquisition, the condemned unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified by the declaration, and the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interest.

(c) Requires the award to be paid to the association, as trustee for the unit owners and to persons holding liens on the condemned property, as their interests may appear, if part of the common elements is acquired by condemnation. Requires the association to divide any portion of the award not used for any restoration or repair of the common elements among the unit owners in proportion to their respective common element interests before the taking, but the portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition, or in any manner the declaration provides.

(d) Requires the court decree to be recorded in each county in which any portion of the condominium is located.

Sec. 82.008. VENUE. Provides that venue for an action to enforce a right or obligation arising under the declaration, bylaws, or rules of the association is in each county in which any part of the condominium is located.

SUBCHAPTER B. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

Sec. 82.051. CREATION OF CONDOMINIUM. (a) Authorizes a condominium to be created under this chapter only by recording a declaration executed in the same manner as a deed by all persons who have an interest in the real property that will be conveyed to unit owners and by every lessor of a lease the expiration or termination of which will terminate the condominium or reduce its size. Requires the declaration to be recorded in each county in which any portion of the condominium is located.

(b) Prohibits a declarant from conveying an interest in a unit until each holder of a mortgage on the unit immediately before conveyance has executed a consent to declaration.

(c) Authorizes the defect of a recorded declaration not properly executed to be cured by a subsequent execution conforming to Subsection (a). Provides that after an execution defect is cured by authority of this subsection, the declaration is retroactively effective on the date it was first recorded.

(d) Requires a county clerk to record declarations and amendments to declarations in the real property records, and to record condominium plats or plans in the real property records or in books maintained for that purpose, as a declarant may request. Requires the book for the condominium plat records to be the same size and type as the book for recording subdivision plats.

(e) Provides that this chapter does not affect or diminish the rights of municipalities and counties to approve plats of subdivisions and enforce building codes as may be authorized or required by law.

Sec. 82.052. UNIT BOUNDARIES. Provides that except as otherwise provided by the declaration or plat:

(1) if walls, floors, or ceilings are designated as boundaries of a unit then materials

constituting part of the finished surfaces are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements;

(2) if any fixture is partially within and partially outside the designated boundaries of a unit, then the portion serving only that unit is a limited common element allocated solely to that unit, and the portion serving more than one unit or the common elements is a part of the general common elements;

(3) subject to Subdivision (2), the spaces, interior partitions, and other fixtures and improvements within the boundaries of the unit are a part of the unit, and

(4) fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

Sec. 82.053. CONSTRUCTION AND VALIDITY OF DECLARATION AND BYLAWS.

(a) Provides that the provisions of the declaration and bylaws are severable.

(b) Prohibits the rule against perpetuities from being applied to defeat any provision of the declaration, bylaws, or rules of the association.

(c) Provides that if there is a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent that the declaration is inconsistent with this chapter.

(d) Provides that title to a unit and common elements is not made unmarketable or otherwise affected by a provision of unrecorded bylaws or by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

Sec. 82.054. DESCRIPTION OF UNITS. Provides that a description of a unit is a sufficient legal description of the unit and all rights, obligations, and interests appurtenant to the unit that were created by the declaration or bylaws if the description contains certain information.

Sec. 82.055. CONTENTS OF DECLARATION FOR ALL CONDOMINIUMS. Requires the declaration for a condominium to contain certain information.

Sec. 82.056. LEASEHOLD CONDOMINIUMS. (a) Requires any lease the expiration or termination of which may terminate the condominium or reduce its size to be recorded. Requires the lessor to sign the declaration, and requires the declaration to state certain information.

(b) Provides that after the declaration for a leasehold condominium is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of the unit owner's share of the rent and otherwise complies with all covenants that, if violated, would entitle the lessor to terminate the lease. Provides that a unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.

(c) Provides that acquisition of the leasehold interest of a unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(d) Requires the allocated interest, if the expiration or termination of a lease decreases the number of units in a condominium, to be reallocated as though those units had been taken by condemnation unless otherwise provided by the declaration. Requires reallocation to be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

Sec. 82.057. ALLOCATION OF COMMON ELEMENT INTERESTS, VOTES, AND COMMON EXPENSE LIABILITIES. (a) Requires the declaration to allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. Prohibits these allocations from discriminating in favor of units owned by the declarant.

(b) Requires the declaration to state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal of units from the condominium.

(c) Authorizes the declaration to provide that different allocations of votes must be made to the units on matters specified in the declaration and for class voting on specified issues affecting the class if necessary to protect valid interests of the class.

(d) Prohibits a declarant from using cumulative or class voting to evade any limitation imposed on declarants by this chapter. Prohibits units from constituting a class because the units are owned by a declarant.

(e) Sets forth the sum of the undivided interests in the common elements and of the common expenses liabilities allocated at any time to all units.

(f) Provides that the common elements are not subject to partition. Provides that any purported conveyance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements without the unit to which that interest is allocated is void.

Sec. 82.058. LIMITED COMMON ELEMENTS. (a) Prohibits the limited common elements and the provisions of the declaration relating to the right to use the limited common elements from being altered without the consent of each affected unit owner and the owner's first lien mortgagee.

(b) Authorizes a limited common element to be reallocated by an amendment to the declaration, executed by the unit owners between or among whose units the reallocation is made, except as otherwise provided by the declaration. Requires the persons executing the amendment to deliver it to the association, which shall record it at the expense of the reallocating unit owners.

(c) Prohibits a common element not previously allocated as a limited common element from being allocated except pursuant to the declaration made in accordance with Section 82.055(7). Requires the allocation to be made by amendment to declaration.

Sec. 82.059. PLATS AND PLANS. (a) Provides that plats and plans are a part of the declaration and may be recorded as a part of the declaration or separately. Requires each plat or plan to be legible and contain a certification that the plat or plan contains all information required by this section.

(b) Requires the each plat to show certain information.

(c) Authorizes a plat to show the intended location and dimension of a contemplated improvement to be constructed anywhere within the condominium, which must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

(d) Requires plans to show certain information to the extent not shown on the plats.

(e) Provides that the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans, unless the declaration provides otherwise. Provides that interior walls and partitions within a unit need not be included in the plats or plans.

(f) Requires the declarant to record either new plats and plans necessary to conform to the requirements of this section or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of this section, on exercising any development right.

(g) Requires an independent licensed surveyor or engineer to certify at least one plat, showing all perimeter land boundaries of the condominiums, except for additional real property, and showing the locations on the ground of all buildings labeled "MUST BE BUILT" in relation to land boundaries. Requires certification of any other plat or plan required by this chapter to be made by an independent licensed architect, surveyor, or engineer.

Sec. 82.060. EXERCISE OF DEVELOPMENT RIGHT. (a) Requires the declarant to prepare, execute, and record an amendment to the declaration and record new plats and plans for that real property to exercise a development right. Requires the amendment to the declaration to assign an identifying number to each new unit created and, except for subdivision or conversion of units described by Subsection (b), reallocate the allocated interest among all units. Requires the amendment to describe any limited common elements created, designating the unit to which each is allocated.

(b) Authorizes development rights to be reserved within any real property added to the condominium if the amendment adding the real property includes the information required by Section 82.055 or 82.056, as appropriate, and the plats and plans include the information required by Section 82.059(b). Provides that this provision does not extend the time limit on the exercise of development rights imposed by the declaration. Provides that real property to be added is not part of a condominium or subject to a declaration until the declaration is amended to make the additional real property part of the condominium.

(c) Sets forth the requirements for the amendment to the declaration whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements or both.

(d) Sets forth conditions under which none of the real property or portions may be withdrawn after a unit has been conveyed to a purchaser if the declaration provides that all or a portion of the real property is subject to the development right of withdrawal.

Sec. 82.061. ALTERATIONS OF UNITS. (a) Authorizes a unit owner to take certain actions regarding alterations of units subject to the provisions of the declaration and other provisions of law.

(b) Provides that removal of partitions or creation of apertures under Subsection (a)(3) is not an alteration of boundaries.

Sec. 82.062. RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS. Authorizes the boundaries between adjoining units to be relocated by an amendment to the declaration on written application to the association by the owners of those units subject to the declaration. Requires the application to state proposed reallocations of the owners of the adjoining units have specified a reallocation between their units of their allocated interests. Requires the association to prepare an amendment that identifies the units involved, states the reallocation, is executed by the applying unit owners, and contains words of conveyance between them, unless the board determines within 30 days after the date the application is received that the reallocation is unreasonable. Requires the association to prepare amended plats or plans to show changes between the adjoining units at the expense of the applying unit owners.

Sec. 82.063. SUBDIVISION OF UNITS. (a) Authorizes a unit to be subdivided into two or more units if expressly permitted by the declaration. Requires the association to prepare an amendment to the declaration subdividing the unit after application of a unit

owner to subdivide a unit and after payment by the owner of certain costs.

(b) Requires the amendment to the declaration to be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner.

Sec. 82.064. EASEMENT FOR ENCROACHMENTS. Provides that to the extent that a unit or common element encroaches on another unit or common element, a valid easement for the encroachment exists. Sets forth the requirements for the easement.

Sec. 82.065. USE FOR SALES PURPOSES. Authorizes the declaration to permit a declarant to maintain sales, leasing, or management offices and models in units or on common elements in the condominium if the declaration specifies the rights of a declarant with regard to the number, size, location, and relocation of the offices and models. Sets forth requirements and restrictions for offices and models.

Sec. 82.066. EASEMENT RIGHTS. Provides that subject to the declaration, a declarant has an easement through the common elements as may be necessary for discharging the declarant's obligations or exercising special declarant rights whether arising under this chapter or reserved by the declaration.

Sec. 82.067. AMENDMENT OF DECLARATION. Authorizes a declaration to be amended only by vote or agreement of unit owners to which at least 67 percent of the votes in the association are allocated, or any large majority the declaration specifies. Authorizes a declaration to specify a smaller number only if all of the units are restricted exclusively to nonresidential use. Sets forth the method for adopting an amendment to a declaration.

(b) Sets forth amendments to which the amendment procedures of this section do not apply.

(c) Requires an action to challenge the validity of an amendment adopted by the association under this section to be brought before the first anniversary of the date the amendment is recorded.

(d) Requires an amendment to the declaration to be recorded in each county in which any portion of the condominium is located, to be effective.

(e) Prohibits an amendment from creating or increasing certain items unless the amendment is approved by 100 percent of the votes in the association, except as permitted or required by this chapter. Prohibits an amendment from increasing or otherwise modifying the obligations imposed by a declaration on a declarant or reduce or otherwise modify the rights granted by a declaration to a declarant, including special declarant rights, except as agreed to by the declarant.

(f) Authorizes the board of directors of the association (board) or the declarant, if the declarant owns a unit that has never been occupied and if permitted by the declaration, without a vote of the unit owners or approval of the association amend the declaration in any manner necessary to meet the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Veterans Administration.

(g) Requires amendments to the declaration required by this chapter to be recorded by the association to be prepared, executed, recorded and certified by an officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(h) Authorizes the association to amend the declaration to authorize the board to take certain actions.

Sec. 82.068. TERMINATION OF CONDOMINIUM. (a) Authorizes a condominium to be terminated only by agreement of 100 percent of the votes in the association and each holder of a deed of trust or vendor's lien on a unit, unless the declaration provides otherwise and except for a taking of all the units by condemnation. Prohibits the declaration from allowing a termination by less than 80 percent of the votes in the association if any unit is restricted exclusively to residential uses.

(b) Requires an agreement of unit owners to terminate a condominium to be evidenced by the execution or ratification of a termination agreement by the requisite number of unit owners. Requires the termination agreement to set forth the terms of the sale of the real property constituting the condominium if the property is to be sold. Requires a termination agreement and all ratifications of the agreement to be recorded in each county in which a portion of the condominium is located.

(c) Authorizes the association, on behalf of the unit owners, to contract for the sale of real property in the condominium, but the contract is not binding on unit owners until it is approved under Subsections (a) and (b). Sets forth the powers and duties of the association in regard to the sale of real property of the condominium. Requires proceeds of the sale to be distributed to unit owners and lienholders as their interests may appear. Provides that as long as the association unit holds title to the real property, each unit owner and the owner's successors in interest have an exclusive right to occupy the portion and remain liable for the portion of real property that formerly constituted the owner's unit.

(d) Provides that if the real property is not to be sold following the termination, on termination title to the real property vests in the unit owners as tenants in common in proportion to their respective interests, and liens on the unit shift accordingly. Provides that while the tenancy in common exists, a unit owner and the owner's successors in interest have an exclusive right to occupy the portion of the real property that formerly constituted the owner's unit.

(e) Requires the assets of the association to be distributed to unit owners in proportion to their respective interests, following the termination of the condominium, and after payment of or portions for the claims of the association's creditors. Provides that the proceeds of sale described by Subsection (c) and held by the association as trustee are not assets of the association.

(f) Sets forth the method for determining the interest of a unit owner.

(g) Provides that if a unit or a limited common element is destroyed to the extent that an appraisal of the fair market value before the destruction cannot be made, the interest of a unit owner is the owner's common element interest immediately before the termination.

(h) Provides that foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium does not withdraw that portion from the condominium, unless the portion is withdrawable real property or unless the mortgage being foreclosed was recorded before the date the declaration was recorded and the mortgagee did not consent in writing to the declaration.

(i) Authorizes the unit owners to rescind a termination agreement and reinstate the declaration in effect immediately before the election to terminate by agreement of the same percentage of unit owners that is required to terminate the condominium. Requires the rescission agreement to be in writing, executed by the unit owners who desire to rescind, and recorded in each county in which any portion of the condominium is located.

Sec. 82.069. RIGHTS OF SECURED LENDERS. Authorizes the declaration to require

that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but prohibits a requirement for approval from operating to deny or prevent certain actions.

SUBCHAPTER C. CONDOMINIUM MANAGEMENT

Sec. 82.101. ORGANIZATION OF UNIT OWNERS' ASSOCIATION. Requires a unit owners' association to be organized as a profit or nonprofit organization. Prohibits the declarant from conveying a unit until the secretary of state has issued a certificate of incorporation under the Texas Non-Profit Corporation Act. Sets forth the membership of the association.

Sec. 82.102. POWERS OF UNIT OWNERS' ASSOCIATION. (a) Sets forth the powers of the association.

(b) Prohibits the declaration from imposing limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(c) Provides that to be enforceable, a bylaw or rule of the association must not be arbitrary or capricious.

(d) Requires the association to give the unit owner a written notice that contains certain information before an association may charge the unit owner for property damage for which the unit owner is liable or levy a fine for violation of the declaration.

(e) Authorizes the association to give a copy of the notice required by Subsection (d) to an occupant of the unit. Requires the association to give notice of a levied fine or damage charge to the unit owner within 30 days after the date of the levy.

Sec. 82.103. BOARD MEMBERS AND OFFICERS. (a) Requires the board to act in all instance on behalf of the association if in the good-faith judgment of the board the action is reasonable, except as provided by the declaration, bylaws, or this chapter. Provides that each officer or member of the board is liable as a fiduciary of the unit owners for the officer's or member's acts or omissions. Requires all acts of the association to be by and through the board unless otherwise provided by the declaration or bylaws or by law.

(b) Prohibits the board from acting on behalf of the association to amend the declaration except as permitted by this chapter, to terminate the condominium, to elect members of the board, or to determine the qualifications, powers and duties, or terms of office of board members. Authorizes the board to fill a vacancy in its membership for the unexpired portion of a term.

(c) Authorizes the declaration to provide for a period of declarant control of the association during which a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the board, subject to Subsection (d). Sets forth the requirements for the period of declarant control.

(d) Requires within 120 days after the conveyance of 50 percent of the units that may be created to unit owners other than a declarant, not less than one-third of the members of the board to be elected by unit owners other than the declarant.

(e) Requires the unit owners to elect a board of at least three members who need not be unit owners, not later than the termination of a period of declarant control. Requires the board to elect the officers before the 31st day after the date declarant control terminates. Requires the person elected to take office on election.

(f) Provides that an officer or director of the association is not liable to the association or any unit owner for monetary damages for an act or omission occurring in the person's capacity as an officer or director unless certain conditions are met.

(g) Provides that Subsection (f) does not diminish a limitation of liability provided an officer or director of the association by the declaration, bylaws, articles of incorporation of the association or other laws.

Sec. 82.104. TRANSFER OF SPECIAL DECLARANT RIGHTS. (a) Prohibits special declarant rights created or reserved under this chapter from being transferred except by an instrument evidencing the transfer recorded in each county in which any portion of the condominium is located. Provides that the instrument is not effective unless executed by the transferee.

(b) Provides that on transfer of any special declarant right, a transferor is not relieved of an obligation or liability arising before the transfer. Provides that a transferor is not liable for an act or omission or a breach of an obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Provides that a person acquiring title to all the real property being foreclosed or sold to request to succeed to all special declarant rights or only to rights reserved by the declaration to maintain models, offices, and signs. Authorizes the judgment or instrument conveying title to provide for transfer of only the special declarant rights requested.

(d) Provides that on foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceeding of all units and other real property in a condominium owned by a declarant, the declarant ceases to have any special declarant rights and the period of declarant control terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(e) Sets forth the liabilities and obligations of a person who succeeds to special declarant rights.

(f) Provides that this section does not subject a successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration.

Sec. 82.105. TERMINATION OF CONTRACTS AND LEASES OF DECLARANT. Authorizes an association in a residential or recreational condominium to terminate, without penalty, contracts or leases between the association and a declarant or an affiliate of a declarant if certain conditions are met.

Sec. 82.106. BYLAWS. (a) Provides that the administration and operation of the condominium are governed by the bylaws which are required to provide for certain items.

(b) Authorizes the bylaws to provide for other matters the association considers desirable, necessary, or appropriate subject to the declaration.

Sec. 82.107. UPKEEP OF CONDOMINIUM. (a) Provides that the association is responsible for upkeep of the common elements and each unit owner is responsible for upkeep of the owner's unit, except as provided by the declaration or Subsections (b) and (c). Requires each unit owner to afford to the association and other owners access through the owner's unit reasonably necessary for those purposes. Provides that if damage is inflicted on the common elements or on any unit through which access is taken, the owner responsible for the damage, or the association if it is responsible, is liable for prompt repair of damage.

(b) Provides that each unit owner is responsible for the cost of maintenance, repair, and replacement of any utility installation or equipment serving only the owner's unit. Defines utility installations and equipment.

(c) Provides that each unit owner is responsible for the cost of maintenance, repair, and replacement of windows and doors serving only the owner's unit, unless otherwise provided by the declaration.

(d) Authorizes the association to enter a unit, after giving notice to the owner and occupant of the unit for certain reasons, unless otherwise provided by the declaration.

Sec. 82.108. MEETINGS. (a) Requires meetings of the association to be held at least once a year. Authorizes special meetings to be called by certain entities, unless the declaration provides otherwise. Requires notice of the meetings to be given in accordance with the bylaws.

(b) Requires meetings of the association and the board to be open to unit owners, subject to the right of the board to adjourn a meeting and reconvene in closed executive session to consider certain actions. Requires the general nature of any business to be considered in executive session to first be announced at the open meeting.

(c) Provides that unless the declaration, bylaws, or articles of incorporation of the association provide otherwise, a meeting of the board may be held by any method of electronic communication by which each director may hear and be heard by every other director and in lieu of a meeting the board may act by unanimous written consents of directors to be filed with the minutes of board meetings.

Sec. 82.109. QUORUMS. (a) Sets forth the quorum requirements for the association.

(b) Sets forth the quorum requirements for the board.

Sec. 82.110. VOTING AND PROXIES. (a) Authorizes a person to cast the vote or votes allocated to a unit if only one of the multiple owners of the unit is present. Authorizes the vote allocated to a unit to be cast only by unanimous consent of the owners present if more than one owner of the unit is present. Sets forth requirements for unanimous agreement.

(b) Authorizes votes allocated to a unit to be cast under a written proxy duly executed by a unit owner or owners. Prohibits a unit owner from revoking a proxy except by giving actual notice of revocation to the person presiding over a meeting of the association. Provides that a proxy is void if it is not dated or if it purports to be revocable without notice. Provides that a proxy terminates one year after its date unless it specifies a shorter or longer time.

(c) Provides that cumulative voting is not allowed.

Sec. 82.111. INSURANCE. (a) Requires the association to maintain certain insurance beginning not later than the time of the first conveyance of a unit to a person other than a declarant.

(b) Requires the insurance maintained under Subsection (a)(1) to include units having horizontal boundaries but not improvements and betterments installed by unit owners.

(c) Requires the association to cause notice that insurance described in Subsections (a) and (b) is not reasonably available to be delivered or mailed to all unit owners and lienholders. Authorizes the declaration or the board to require the association to carry other insurance. Provides that this section does not affect the right of a holder of a mortgage on a unit to require a unit owner to acquire insurance in addition to that provided by the association.

- (d) Requires insurance policies carried under Subsection (a) to meet certain conditions.
- (e) Requires a claim for any loss covered by the policy under Subsection (a)(1) to be submitted by and adjusted with the association. Requires the insurance proceeds for that loss to be payable to an insurance trustee or to the association, and not to any unit owner or lienholder.
- (f) Requires the insurance trustee or the association to hold insurance proceeds in trust for unit owners and lienholders as their interests may appear. Sets forth the method of disbursement of proceeds paid under a policy.
- (g) Provides that an insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the owner's own benefit.
- (h) Prohibits the insurer issuing the policy from canceling or refusing to renew it less than 30 days after written notice of the proposed cancellation or nonrenewal has been mailed to the association.
- (i) Requires any portion of the condominium for which insurance is required that is damaged or destroyed to be promptly repaired or replaced by the association unless the condominium is terminated. Sets forth the requirements for not rebuilding a condominium.
- (j) Authorizes the provisions of this section to be varied or waived if all the units in a condominium are restricted to nonresidential use.

Sec. 82.112. ASSESSMENTS FOR COMMON EXPENSES. (a) Requires a declarant to pay all expenses of the condominium as the expenses accrue, until an association makes a common expense assessment. Requires assessments to be made at least annually and to be based on a budget adopted at least annually by the association, after an initial assessment by the association. Prohibits the association's reserves and the unit owners' working capital contributions from being used to pay operational expenses until the declarant control terminates.

- (b) Requires the declarant to periodically pay certain amounts to the association from the date of the initial assessment until declarant control terminates, or three years from a declarant's first conveyance of a unit, whichever is earlier.
- (c) Requires common expenses to be assessed against all units conveyed, rented, or used as models or offices by the declarant and against all units owned by a declarant after termination of a declarant's control of three years from a declarant's first conveyance of a unit, whichever is earlier, in accordance with the common expense liability allocated to each unit. Authorizes a past due assessment or installment of an assessment to bear interest at a lawful rate established by the association.
- (d) Requires a common expense for the maintenance, repair, or replacement of a limited common element to be assessed against all units as if it were for a general common element, except as provided by the declaration and Section 82.107.
- (e) Requires common expense assessments and an assessment installment not yet due to be recomputed in accordance with reallocated common expense liabilities.
- (f) Authorizes a declaration to allow the accumulation of reserve funds for an unspecified period to provide for any anticipated expense of the condominium.
- (g) Provides that this section does not prevent a declarant from collecting from a purchaser at closing the prorated amount of any expenses, such as insurance or taxes, that the declarant has prepaid to the association or directly to others on behalf of the unit that is being purchased.

Sec. 82.113. ASSOCIATION'S LIEN FOR ASSESSMENTS. (a) Provides that an assessment levied by the association against a unit or unit owner is a personal obligation of the owner and is secured by a continuing lien on the unit and on rents and insurance proceeds received by the unit owner relating to the owner's unit. Defines "assessments."

(b) Provides that the association's lien for assessments has priority over any other lien except for certain liens.

(c) Provides that the association's lien for assessments is created by recordation of the declaration, which constitutes record notice and perfection of the lien. Provides that unless the declaration provides otherwise, no other recordation of a lien or notice of lien is required.

(d) Provides that by acquiring a unit, a unit owner grants to the association a power of sale in connection with the association's lien. Authorizes the board to appoint an officer, agent, trustee, or attorney of the association to exercise power of sale on behalf of the association. Requires the association to exercise its power of sale pursuant to Section 51.002, except as provided by the declaration.

(e) Provides that the association has the right to foreclose its lien judicially or by nonjudicial foreclosure pursuant to the power of sale created by this chapter or the declaration, except that the association may not foreclose a lien for assessments consisting solely of fines. Authorizes costs of foreclosure to be added to the amount owed by the unit owner to the association. Prohibits a unit owner from petitioning a court to set aside a sale solely because the purchase price at the foreclosure sale was insufficient to fully satisfy the owner's debt.

(f) Authorizes the association to bid for and purchase the unit at foreclosure sale as a common expense. Authorizes the association to own, lease, encumber, exchange, sell, or convey a unit.

(g) Authorizes the owner of a unit used for residential purposes and purchased by an association at a foreclosure sale of the association's lien for assessment to redeem the unit not later than 90 days after the foreclosure sale. Sets forth the requirements for redeeming a unit.

(h) Authorizes the association to notify other lienholders of the default and the association's intent to foreclose its lien, if a unit owner defaults in the owner's monetary obligations to the association. Requires the association to notify any holder of a recorded lien or duly perfected mechanic's lien against a unit who has given the association a written request for notification of the unit owner's monetary default or the association's intent to foreclose its lien.

(i) Provides that this section does not prohibit the association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien.

(j) Authorizes a unit owner to avoid foreclosure by paying all amounts due the association at any time before a nonjudicial foreclosure sale.

(k) Provides that if, on January 1, 1994, a unit is the homestead of the unit owner and is subject to a declaration that does not contain a valid assessment lien against the unit, the lien provided by this section does not attach against the unit until the unit ceases to be the homestead of the person owning it on January 1, 1994.

(l) Provides that foreclosure of a tax lien attaching against a unit under Chapter 32, Tax Code, does not discharge the association's lien for assessments under this section or under a declaration for amount becoming due to the association after the date of foreclosure of the tax lien.

(m) Authorizes a holder of a recorded lien against the unit at the request of the association, to provide the association with information about the unit owner's debt secured by the holder's lien against the unit and other relevant information, if a unit owner is delinquent in payment of assessments to an association. Authorizes the association to furnish the lien holder on request information about the condominium and the owner's obligations to the association.

Sec. 82.114. ASSOCIATION RECORDS. (a) Requires the association to keep certain information.

(b) Requires all financial and other records of the association to be reasonably available at its registered office or its principal office in this state for examination by a unit owner and the owner's agents. Provides that an attorney's files and records relating to the association are not records of the association and are not subject to inspection by unit owners or production in a legal proceeding.

(c) Requires the association, as a common expense, to annually obtain an independent audit of records. Requires copies of the audit to be made available to the unit owners. Requires an audit to be performed by a certified public accountant if required by the bylaws or a vote of the board of directors or a majority vote of the members of the association voting at a meeting of the association.

(d) Requires a declarant to furnish copies to the association of the information required by Subsection (a) on the date the first unit is sold.

(e) Requires the unit owner to provide the association with certain information within 30 days after acquiring an interest in a unit.

(f) Requires a unit owner to notify the association within 30 days after the owner has notice of a change in any information required by Subsection (e) and to provide the information on request by the association from time to time.

Sec. 82.115. ASSOCIATION AS TRUSTEE. Authorizes a third person dealing with an association in the association's capacity as a trustee to assume without inquiry the existence of trust powers and their proper exercise by the association. Provides that a third person who lacks actual knowledge that an association is exceeding or improperly exercising its powers is fully protected in dealing with the association as if the association possessed and properly exercised the powers it purports to exercise. Provides that a third person is not bound to ensure the proper application of trust assets paid or delivered to an association in its capacity as trustee.

Sec. 82.116. MANAGEMENT CERTIFICATE. (a) Requires an association to record in each county in which any portion of the condominium is located a certificate, signed and acknowledged by an officer of the association, stating certain information.

(b) Requires an association to record a management certificate within 30 days after the association has notice of a change in any information in a recorded certificate required by Subdivisions (a)(1)-(5).

(c) Provides that the association and its officers, directors, employees, and agents are not subject to liability to any person for delay or failure to record a management certificate, unless the delay or failure is wilful or caused by gross negligence.

Sec. 82.117. OBLIGATIONS OF UNIT OWNERS. Requires the owner of a unit to take certain actions without limiting the obligations of the unit owners and except as provided by the declaration, bylaws, rules of the association, or this chapter.

SUBCHAPTER D. PROTECTION OF PURCHASERS

Sec. 82.151. APPLICABILITY. (a) Provides that this subchapter applies to each unit

subject to this chapter, except as provided by Subsection (b) or as modified or waived by the agreement of a purchaser of a unit in a condominium in which all units are restricted to nonresidential use.

(b) Provides that a condominium information statement (statement) or resale certificate need not be prepared or delivered in certain cases.

Sec. 82.152. LIABILITY FOR CONDOMINIUM INFORMATION STATEMENT. (a) Requires a declarant to prepare a statement before offering to the public any interest in a unit, except as provided by Subsection (b).

(b) Authorizes a declarant to transfer responsibility for preparation of all or part of the statement to a successor declarant or to a person in the business of selling real property who intends to offer units in the condominium for the person's own account. Requires a transferor to provide the transferee with any information necessary to enable the transferee to prepare a statement.

(c) Requires a declarant or other person in the business of selling real property who offers a unit for the person's own account to a purchaser to provide a purchaser of a unit with a copy of the statement, as amended, before conveyance of the unit or the date of a contract of sale, whichever is earlier.

(d) Provides that the person preparing all or part of the statement is liable for any false or misleading statement or for any omission of material fact in the portion of the statement that the person prepared. Provides that if the declarant did not prepare any part of the statement delivered the declarant is not liable unless the declarant actually knew or should have known of the statement or omission.

Sec. 82.153. CONDOMINIUM INFORMATION STATEMENTS IN GENERAL. (a) Sets forth requirements for a statement.

(b) Requires a budget under Subsection (a)(6) to be prepared in accordance with generally accepted accounting principles and a consideration of the physical condition of the condominium and be based on assumptions that, to the best of the declarant's knowledge and belief, are reasonable. Requires the budget to include certain information.

(c) Requires a declarant to promptly amend the statement to reflect a material and substantial change in its contents. Requires the declarant to furnish a copy of the amendment to the prospective purchaser before closing if the change may adversely affect a prospective purchaser who has received a statement.

Sec. 82.154. CONDOMINIUMS WITH CONVERSION BUILDINGS. Requires the statement of a condominium containing any conversion building to contain certain additional information, if a building contains units to be occupied for residential use.

Sec. 82.155. CONDOMINIUM SECURITIES. Provides that a declarant satisfies all requirements relating to preparation of a statement if an interest in the condominium is currently registered with the Securities and Exchange Commission of the United States and if the declarant delivers to the purchaser a copy of the public offering statement filed with the commission.

Sec. 82.156. PURCHASER'S RIGHT TO CANCEL. (a) Authorizes the purchaser of a unit to cancel the contract before the sixth day after the date a purchaser receives certain documents, if the documents were not received before the purchaser executes a contract of sale.

(b) Authorizes the purchaser to cancel the contract before the sixth day after the date the purchaser receives the statement if the purchaser has not received the statement before the purchaser executes a contract of sale or if a contract does not contain an

underlined or bold-print provision acknowledging the purchaser's receipt of the statement and recommending that the purchaser read the statement.

(c) Requires the cancellation of a contract under Subsection (a) or (b) to be by hand-delivery written notice of cancellation to the declarant or selling unit owner or by mailing notice of cancellation by certified United States mail, return receipt requested, to the offeror or the offeror's agent for service of process within the five-day cancellation period. Provides that cancellation is without penalty, and requires payment made by the purchaser before cancellation must be refunded.

(d) Prohibits a selling unit owner from requiring a purchaser to close until the purchaser is given the declaration, bylaws, and any association rules. Prohibits a declarant from requiring a purchaser to close until a statement has been furnished to the purchaser.

Sec. 82.157. RESALE OF UNIT. (a) Requires the unit owner to furnish to the purchaser a current copy of the declaration, bylaws, any association rules, and a resale certificate that must have been prepared not earlier than three months before it is delivered to the purchaser if a owner other than a declarant intends to sell a unit, except as provided by Subsection (c). Requires the resale certificate to be issued by the association and to contain the current operating budget of the association and other statements.

(b) Requires an association to furnish to a selling unit owner or the owner's agent a resale certificate signed and dated by an officer or authorized agent of the association containing the information required by Subsection (a) within 10 days after receiving a written request by a unit owner. Provides that a selling unit owner or the owner's agent is not liable to the purchaser for erroneous information provided by the association in the certificate. Authorizes the unit owner to provide the purchaser with a sworn affidavit signed by the unit owner in lieu of the certificate, if the association does not provide the certificate in a reasonable time. Sets forth requirements of the affidavit. Provides that the association is not liable to the owner for not providing the resale certificate. Provides that failure to provide a resale certificate does not void a deed to a purchaser.

(c) Provides that if a properly executed resale certificate incorrectly states the total of delinquent sums owed by the selling unit owner to the association, the purchaser is not liable for payment of additional delinquencies that are unpaid on the date the certificate is prepared and that exceed the total sum stated in the certificate. Provides that a unit owner or the owner's agent is not liable to a purchaser for failure or delay of the association to provide the certificate in a timely manner.

(d) Sets forth certain items that a resale certificate does not affect.

(e) Provides that a purchaser, lender, or title insurer who relies on a resale certificate is not liable for any debt of claim that is not disclosed in the certificate. Prohibits an association from denying the validity of any statement in the certificate.

Sec. 82.158. ESCROW OF DEPOSITS. Requires a deposit made in connection with the purchase or reservation of a unit from a declarant to be placed in escrow and held in this state in an account designated for that purpose by certain entities until delivered to the declarant or refunded to the purchaser. Authorizes escrow deposits to be place in interest-bearing accounts, and the interest is payable as may be agreed in writing between the declarant and the purchaser.

Sec. 82.159. RELEASE OF LIENS. Requires a declarant to have the real property released from all liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of the owners' units, and all other liens on that real property unless the statement describes certain real property that may be conveyed subject to liens in specified amounts, before conveying real property to an association.

Sec. 82.160. **CONVERSION BUILDINGS.** (a) Requires a declarant of a condominium containing a conversion building to give each residential tenant or subtenant in possession of a portion of a conversion building notice at least 60 days before the date the declarant will require the tenant or subtenant in possession to vacate. Sets forth notification requirements.

(b) Provides that if a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with Section 24.005, the notice also constitutes legal notice to vacate on that date for purposes of Section 24.005. Prohibits a declarant from terminating a lease in violation of its terms.

(c) Prohibits a declarant from making substantial alteration to the interior of a leased premises for purposes of a condominium conversion, unless expressly authorized by a rental agreement.

Sec. 82.161. **EFFECT OF VIOLATIONS ON RIGHTS OF ACTION AND ATTORNEY'S FEES.** (a) Provides that if a declarant or any other person subject to this chapter violates this chapter, the declaration, or the bylaws, any person or class of persons adversely affected by the violation has a claim for appropriate relief.

(b) Provides that the prevailing party in an action to enforce the declaration, bylaws, or rules is entitled to reasonable attorney's fees and costs of litigation from the nonprevailing party.

Sec. 82.162. **LABELING OF PROMOTIONAL MATERIAL.** Sets forth the requirements for the labeling of promotional material.

Sec. 82.163. **DECLARANT'S OBLIGATION TO COMPLETE AND RESTORE.** Requires the declarant to complete all improvements labeled "MUST BE BUILT" on plats or plans. Sets forth liability of the declarant under this section.

Sec. 82.164. **LOANS AS ELIGIBLE INVESTMENTS.** (a) Provides that a loan on a condominium unit and the undivided interest in common elements is an eligible investment for certain entities. Sets forth the requirements for determining eligibility.

(b) Provides that an association's lien for assessments does not make a condominium unit ineligible for loans for which the unit would otherwise qualify.

SECTION 2. Amends the heading of Chapter 81, Property Code, as follows:

**CHAPTER 81. CONDOMINIUMS CREATED BEFORE ADOPTION OF UNIFORM
CONDOMINIUM ACT**

SECTION 3. Amends Chapter 81A, Property Code, by adding Section 81.0011, as follows:

Sec. 81.0011. **APPLICABILITY.** (a) Provides that this chapter applies only to a condominium regime created before January 1, 1994. Provides that a condominium regime created on or after January 1, 1994, is governed by Chapter 82.

(b) Provides that a condominium regime created before January 1, 1994, to which this chapter applies is also governed by Chapter 82, as provided by Section 82.002.

SECTION 4. Effective date: January 1, 1994.

SECTION 5. Emergency clause.